

RAS 8709

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED 10/27/04

SERVED 10/27/04

Before Administrative Judges:

Dr. Paul B. Abramson, Chairman
Dr. Anthony J. Baratta
Dr. David L. Hetrick

In the Matter of

EXELON GENERATION COMPANY, LLC

(Early Site Permit for Clinton ESP Site)

Docket No. 52-007-ESP

ASLBP No. 04-821-01-ESP

October 27, 2004

ORDER
(Establishing Hearing Schedule)

This Board conducted the third prehearing conference call in this matter on October 19, 2004 to discuss the Applicant's responses to RAIs regarding Intervenor's contention EC 3.1 (The Clean Energy Alternatives Contention), scheduling and other matters.

1. Staff Response to RAIs. The Staff advised that it will require approximately 3-4 weeks to complete its review of the responses and determine whether additional RAIs are necessary. The Staff will advise this Board and the other parties as to future RAIs if and when they are issued.
2. Intervenor's Response to RAIs. The Intervenor advised that their review of the Applicant's responses to the RAIs indicates to them that the application remains deficient in the regard set out in contention EC 3.1.
3. Discovery. The Board noted, at the suggestion of **the Applicant**, that 10 C.F.R. § 2.1203(d), which is applicable to this proceeding, provides that no party may seek discovery except as otherwise permitted by subpart C of 10 C.F.R. Part 2.

4. Timing of Staff Initial Writing Session for Draft Environmental Impact Statement; Fourth Prehearing Conference Call. The Staff indicated that the initial writing session for the DEIS, which was originally scheduled for November 2004, may be moved back to December 2004, thus moving the projected release date for the DEIS back to approximately March 2005. The Staff will advise this Board and the other parties of future modifications of those projected dates. This Board will schedule a fourth prehearing conference call following the writing session.
5. Timing of Release of FEIS; Hearing Schedule for Contested Matters. The Staff noted that, contrary to the statement in our September 30, 2004 Order, the projected date of release for the FEIS was approximately September 25, 2005 and is now projected to slip at least one month. Since the parties agree that adequate preparation for a hearing on contention EC 3.1 must await review of the FEIS, we hereby establish the following schedule:
 - a) Initial written statements of position and written testimony with supporting affidavits on the admitted contentions will be due 45 calendar days following receipt of the Staff's FEIS [date established by the Board pursuant to 10 C.F.R. § 2.1207(a)(1)];
 - b) Written responses and rebuttal testimony with supporting affidavits directed to the initial statements and testimony of other participants due 20 calendar days after materials submitted under paragraph (a) above;
 - c) Proposed questions for the Board to consider propounding to witnesses due 20 calendar days after materials submitted under paragraph (a) above;
 - d) Proposed questions directed to rebuttal testimony for the Board to consider propounding to witnesses due 7 calendar days after materials submitted under paragraph (b) above;
 - e) Motions to permit cross examination by a party (which should include a proposed cross examination plan) due 7 calendar days after materials submitted under paragraph (b) above;
 - f) Hearing location and date to be established by the Board at a later date based upon witness, party and Board availability;

g) Post-hearing proposed findings of fact and conclusions of law due from parties 30 calendar days after the close of the hearing;

h) The Board will, at a later date, set a schedule for the issuance of its Initial Decision pursuant to § 2.334, but we currently contemplate a date not later than 45 calendar days after receipt of proposed findings.

6. Schedule for Limited Appearances and Mandatory Hearings. The Board will schedule limited appearances and establish dates for the mandatory hearing portions of this proceeding at a later time when definitive dates have been established for other elements of the hearing schedule.

FOR THE ATOMIC SAFETY
AND LICENSING BOARD¹

/RA/

Paul B. Abramson, Chairman
ADMINISTRATIVE JUDGE

Rockville, Maryland

October 27, 2004

¹Copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for (1) applicant EGC; (2) the Intervenor; and (3) the NRC Staff.

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NUCLEAR REGULATORY COMMISSION

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing LB ORDER (ESTABLISHING HEARING SCHEDULE) have been served upon the following persons by deposit in the U.S. mail, first class, or through NRC internal distribution.

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Docket No. 52-007-ESP
LB ORDER (ESTABLISHING HEARING
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[Original signed by Evangeline S. Ngbea]

Office of the Secretary of the Commission

Dated at Rockville, Maryland,
this 27th day of October 2004